

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Tamara F. Giles,

5 Plaintiff,

6 v.

7 Andrew Saul,

8 Defendant.
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Case No. 2:16-cv-01604-BNW

**ORDER GRANTING MOTION FOR
ATTORNEY'S FEES**

10 Plaintiff Tamara Giles' attorney moves for an award of attorneys' fees following Giles'
11 successful motion for remand. No party opposed the motion, although the defendant filed an
12 informative brief without taking a position on fees. The court grants the motion.

13 Giles entered into a contingency fee agreement with her attorney for 25% of any past-due
14 benefits awarded upon a court-ordered reversal of an unfavorable decision by an administrative
15 law judge. ECF No. 39-2. The court reversed the administrative law judge's decision in this case
16 and remanded for further proceedings. ECF No. 31. Upon remand, the Social Security
17 Administration awarded Giles \$70,470.00 in past-due benefits. ECF No. 39.

18 Under 42 U.S.C. § 406(b)(1)(A), when a claimant who is represented by counsel obtains a
19 favorable court judgment, "the court may determine and allow as part of its judgment a
20 reasonable fee for such representation, not in excess of 25 percent of the total of the past-due
21 benefits to which the claimant is entitled by reason of such judgment." This fee is payable out of
22 the past-due benefits awarded to the claimant and not as an additional recovery from the
23 defendant. *Id.*

24 Although other fee-shifting schemes resort to use of the "lodestar" method to calculate a
25 reasonable attorney's fee, § 406(b) is not a fee-shifting statute. *Gisbrecht v. Barnhart*, 535 U.S.
26 789, 802 (2002). The statute requires the attorney's fee be taken from the past-due benefits
27 awarded to the claimant and not as an additional recovery from the defendant. *Id.* Thus, § 406(b)
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1 “does not displace contingent-fee agreements as the primary means by which fees are set for
2 successfully representing Social Security benefits claimants in court. Rather, § 406(b) calls for
3 court review of such arrangements as an independent check, to assure that they yield reasonable
4 results in particular cases.” *Id.* at 807. The only statutorily-imposed constraint is that the fee
5 agreement cannot “provide for fees exceeding 25 percent of the past-due benefits.” *Id.* (citing
6 § 406(b)(1)(A)).

7 Consequently, in Social Security cases, the court begins with the contingency fee
8 agreement and then “tests it for reasonableness.” *Id.* at 808. “[T]he question is whether the
9 amount need[s to] be reduced, not whether the lodestar amount should be enhanced.” *Crawford v.*
10 *Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc). The court may reduce the fee award
11 “based on the character of the representation and the results the representative achieved.”
12 *Gisbrecht*, 535 U.S. at 808. Thus, the court “may properly reduce the fee for substandard
13 performance, delay, or benefits that are not in proportion to the time spent on the case.”
14 *Crawford*, 586 F.3d at 1151. The court may “consider the lodestar calculation, but only as an aid
15 in assessing the reasonableness of the fee.” *Id.* (emphasis omitted).

16 The attorney seeking the fee award bears the burden of establishing the fee sought is
17 reasonable. *Id.* at 1148. The award of fees under § 406(b) lies within the court’s discretion. *Id.* at
18 1147.

19 Giles’ attorney requests less than the full twenty-five percent of Plaintiff’s past due
20 benefits. He requests \$11,500.00. ECF No. 39. He presents evidence that counsel spent 19.8 hours
21 on the case and that paralegals spent 1.9 hours on the case. *Id.* There is no evidence of
22 substandard performance. Rather, counsel obtained a favorable result in the form of a remand and
23 subsequent award of substantial past benefits. There is no evidence counsel caused any delay to
24 increase the contingent amount. Additionally, the fees are not excessively large in relation to the
25 past-due benefits obtained for the claimant. Plaintiff’s attorney, therefore, has met his burden of
26 establishing a reasonable fee award in the amount of \$11,500.00.

1 I previously granted the parties' stipulation to award Giles \$3,800.00 in attorneys' fees
2 under the Equal Access to Justice Act (EAJA). ECF No. 36. Giles' attorney agrees he will credit
3 this amount against any fee awarded under 42 U.S.C. § 406(b). ECF No. 3 at 7; *see also*
4 *Gisbrecht*, 535 U.S. at 796 (stating that a claimant may obtain fee awards under both § 406(b) and
5 the EAJA but the attorney must refund the smaller fee amount to the claimant).

6 **IT IS THEREFORE ORDERED** that the motion for attorney's fees (ECF No. 39) is
7 GRANTED. Plaintiff Tamara Giles' attorney, Marc Kalagian, is awarded attorneys' fees pursuant
8 to 42 U.S.C. § 406(b) in the amount of \$11,500.00.

9 **IT IS FURTHER ORDERED** that Marc Kalagian shall reimburse plaintiff Tamara Giles
10 the amount of \$3,800.00 for EAJA fees previously paid by the Commissioner.

11 **IT IS FURTHER ORDERED** that the hearing set for December 3, 2020 is VACATED.

12 DATED: December 1, 2020.

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14 BREND A WEKSLER
15 UNITED STATES MAGISTRATE JUDGE
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